

Senate File 504 - Introduced

SENATE FILE _____
BY COMMITTEE ON AGRICULTURE

(SUCCESSOR TO SSB 1001)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act providing for the regulation of packers and the purchase
2 of swine from producers, and providing for penalties.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
4 TLSB 1603SV 82
5 da/je/5

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1 1 Section 1. NEW SECTION. 202D.1 PURPOSE.
1 2 The purpose of this chapter is to increase competition and
1 3 transparency among packers that purchase in=state=produced
1 4 swine from producers in this state.
1 5 Sec. 2. NEW SECTION. 202D.2 DEFINITIONS.
1 6 1. "Base price" means the price paid for in=state=produced
1 7 swine, delivered to a packer, before application of any
1 8 premiums or discounts, and expressed in dollars per hundred
1 9 pounds of hot carcass weight as calculated in the same manner
1 10 as provided in 7 C.F.R. } 59.30.
1 11 2. "Business association" means the same as defined in
1 12 section 202B.102.
1 13 3. "Controlling interest" means actual control of a
1 14 business or the exercise of material participation, directly
1 15 or indirectly, in the management and policies of a business,
1 16 whether through the ownership of voting securities, by
1 17 contract, or otherwise.
1 18 4. "Covered packer" means a packer that has a controlling
1 19 interest in a processing plant that slaughters at least one
1 20 thousand swine per business day and that is located in this
1 21 state.
1 22 5. "Custom slaughter agreement" means an agreement under
1 23 which in=state=produced swine are slaughtered by a covered
1 24 packer for another person in which the packer does not have a
1 25 controlling interest, and the covered packer does not or will
1 26 not own the pork or pork products produced by the slaughter of
1 27 such in=state=produced swine.
1 28 6. "Department" means the department of agriculture and
1 29 land stewardship.
1 30 7. "Federal Meat Inspection Act" means the same as defined
1 31 in section 189A.2.
1 32 8. "In=state=produced swine" means a porcine animal raised
1 33 in this state for slaughter for at least one month before the
1 34 date of slaughter including on the date of slaughter.
1 35 9. "Nonaffiliated producer" means a producer who sells
2 1 in=state=produced swine to a packer. In addition, all of the
2 2 following must apply:
2 3 a. The producer has less than a one percent equity
2 4 interest in the packer, including but not limited to as a
2 5 shareholder, partner, member, or beneficiary.
2 6 b. If the producer is a business association, the packer
2 7 has less than a one percent equity interest in the producer,
2 8 including but not limited to as a shareholder, partner,
2 9 member, or beneficiary.
2 10 c. The producer is not an officer, director, employee, or
2 11 owner of the producer who is also an officer, director,
2 12 employee, or owner of the packer. If the producer is a
2 13 business association, an officer, director, employee, or owner
2 14 of the producer cannot also be an officer, director, employee,
2 15 or owner of the packer.
2 16 d. The producer does not owe a fiduciary responsibility to
2 17 the packer.
2 18 e. If the producer is a business association, the packer

2 19 does not have an equity interest in the producer.
2 20 f. The producer must not have a relationship with the
2 21 packer in which the packer does any of the following:
2 22 (1) (a) Directly or indirectly owns, controls, or
2 23 operates the producer's swine operation in this state.
2 24 (b) Finances the producer's swine operation in this state
2 25 or finances a person who directly or indirectly contracts for
2 26 the care and feeding of in-state-produced swine kept at the
2 27 producer's swine operation in this state.
2 28 For purposes of subparagraph subdivision (a) and this
2 29 subparagraph subdivision, all of the following apply:
2 30 (i) "Finance" means an action by a packer to directly or
2 31 indirectly loan money or to guarantee or otherwise act as a
2 32 surety.
2 33 (ii) "Finance" or "control" does not include executing a
2 34 contract for the purchase of in-state-produced swine by a
2 35 packer, including but not limited to a contract that contains
3 1 an unsecured ledger balance or other price risk sharing
3 2 arrangement. "Finance" also does not include providing an
3 3 unsecured open account or an unsecured loan, if the unsecured
3 4 open account or unsecured loan is used for the purchase of
3 5 feed for the in-state-produced swine and the outstanding
3 6 amount due by the producer does not exceed five hundred
3 7 thousand dollars. However, the outstanding amount due to
3 8 support a single swine operation in this state shall not
3 9 exceed two hundred fifty thousand dollars.
3 10 (c) Obtains a benefit of production associated with
3 11 feeding or otherwise maintaining the in-state-produced swine,
3 12 by directly or indirectly assuming a morbidity or mortality
3 13 production risk, if the in-state-produced swine are fed or
3 14 otherwise maintained as part of the producer's swine operation
3 15 in this state or by the producer who contracts for the care
3 16 and feeding of the in-state-produced swine in this state.
3 17 (d) Directly or indirectly receives the net revenue
3 18 derived from the producer's swine operation in this state or
3 19 from a person who contracts with the producer for the care and
3 20 feeding of the in-state-produced swine in this state.
3 21 (2) Directly or indirectly contracts for the care and
3 22 feeding of in-state-produced swine maintained in the
3 23 producer's swine operation in this state.
3 24 10. "Packer" means a business association engaged in
3 25 buying in-state-produced swine in commerce for purposes of
3 26 slaughter, of manufacturing or preparing meats or meat food
3 27 products from in-state-produced swine for sale or shipment in
3 28 commerce, or of marketing meats or meat food products from
3 29 in-state-produced swine in an unmanufactured form acting as a
3 30 wholesale broker, dealer, or distributor in commerce.
3 31 11. "Processing plant" means the geographic location of an
3 32 establishment as defined in section 189A.2 if all of the
3 33 following apply:
3 34 a. It is located in this state.
3 35 b. It is subject to inspection by the department pursuant
4 1 to chapter 189A or the United States department of agriculture
4 2 pursuant to the federal Meat Inspection Act.
4 3 c. It slaughters an average of at least one hundred
4 4 thousand in-state-produced swine per year during the
4 5 immediately preceding five calendar years or has the capacity
4 6 to slaughter that number of in-state-produced swine in any one
4 7 of those years.
4 8 12. "Producer" means a person who holds an ownership
4 9 interest or controlling interest in a business association
4 10 that operates a location in this state where in-state-produced
4 11 swine are fed or otherwise maintained, including a building,
4 12 lot, yard, or corral; or holds an ownership interest or
4 13 controlling interest in in-state-produced swine which are fed
4 14 or otherwise maintained at the location.
4 15 13. "Reasonable competitive bidding opportunity" means
4 16 circumstances in which all of the following apply:
4 17 a. A written or oral agreement does not preclude a
4 18 producer from soliciting or receiving bids from other packers.
4 19 b. No circumstances, customs, or practices exist that do
4 20 any of the following:
4 21 (1) Establish the existence of an implied contract.
4 22 (2) Preclude the producer from soliciting or receiving
4 23 bids from other packers.
4 24 14. "Spot market sale" means a purchase and sale of
4 25 in-state-produced swine by a packer from a producer that
4 26 specifies a firm base price that may be equated with a fixed
4 27 dollar amount on the date the agreement is entered into under
4 28 which the in-state-produced swine are slaughtered not more
4 29 than fourteen days after the date on which the agreement is

4 30 entered into, under circumstances in which a reasonable
4 31 competitive bidding opportunity exists on the date on which
4 32 the agreement is entered into, and under which the
4 33 in=state=produced swine are located in this state.

4 34 15. "Swine operation" means a location where swine are fed
4 35 or otherwise maintained, including a building, lot, yard, or
5 1 corral; and swine which are fed or otherwise maintained at the
5 2 location.

5 3 Sec. 3. NEW SECTION. 202D.4 PURCHASE REQUIREMENTS ==
5 4 SPOT MARKET SALE AND NONAFFILIATED PRODUCERS.

5 5 1. For each business day that a covered packer purchases
5 6 swine, the covered packer shall purchase at least twenty=five
5 7 percent of all in=state=produced swine from nonaffiliated
5 8 producers.

5 9 2. a. For each business day that a covered packer
5 10 purchases swine in this state, at least twenty=five percent of
5 11 all in=state=produced swine purchased in this state shall be
5 12 purchased from nonaffiliated producers by spot market sale.

5 13 b. Notwithstanding the requirement of paragraph "a", the
5 14 spot market purchase requirement shall be implemented as
5 15 follows:

5 16 (1) By July 1, 2007, at least ten percent of all
5 17 in=state=produced swine purchased in this state shall be
5 18 purchased from nonaffiliated producers by spot market sale.

5 19 (2) By July 1, 2008, at least fifteen percent of all
5 20 in=state=produced swine purchased in this state shall be
5 21 purchased from nonaffiliated producers by spot market sale.

5 22 (3) By July 1, 2009, at least twenty percent of all
5 23 in=state=produced swine purchased in this state shall be
5 24 purchased from nonaffiliated producers by spot market sale.

5 25 (4) By July 1, 2010, at least twenty=five percent of all
5 26 in=state=produced swine purchased in this state shall be
5 27 purchased from nonaffiliated producers by spot market sale.

5 28 c. Paragraph "b" and this paragraph "c" are repealed on
5 29 July 1, 2011.

5 30 3. Subsection 1 does not apply to in=state=produced swine
5 31 slaughtered under a custom slaughter agreement.

5 32 Sec. 4. NEW SECTION. 202D.5 CIVIL ACTION.

5 33 If a nonaffiliated producer cannot make a spot market sale
5 34 to a covered packer on a reporting day because a covered
5 35 packer violates section 202D.4, the nonaffiliated producer may
6 1 bring a civil action against the covered packer. The
6 2 nonaffiliated producer may bring the civil action in district
6 3 court for Polk county, the district court of the covered
6 4 packer's principal place of business in this state, or in the
6 5 county where the nonaffiliated producer resides in this state
6 6 or if the nonaffiliated producer is a business association, in
6 7 the county of its principal place of business in this state.

6 8 A covered packer who is guilty of violating section 202D.4
6 9 shall be liable to the nonaffiliated producer for three times
6 10 the amount of the spot market sales price for the swine that
6 11 the nonaffiliated producer would have received if the
6 12 violation had not occurred. The court shall award the
6 13 nonaffiliated producer who prevails in the civil action
6 14 reasonable attorney fees and expert witness fees incurred by
6 15 the nonaffiliated producer, to be paid by the covered packer
6 16 and taxed as part of the costs of the civil action.

6 17 Sec. 5. NEW SECTION. 202D.6 PENALTIES.

6 18 A covered packer who violates a provision of section 202D.4
6 19 is subject to a civil penalty of not more than twenty=five
6 20 thousand dollars. The civil penalties collected under this
6 21 chapter shall be deposited into the general fund of the state.

6 22 Sec. 6. NEW SECTION. 202D.7 ENFORCEMENT ACTION.

6 23 1. a. The attorney general's office is the primary agency
6 24 responsible for enforcing this chapter.

6 25 b. The department shall notify the attorney general's
6 26 office if the department has reason to believe that a
6 27 violation of section 202D.4 has occurred.

6 28 2. The attorney general's office may bring an enforcement
6 29 action in district court in Polk county, in the county where
6 30 the violation occurs, or in the county where the covered
6 31 packer has its principal place of business. The attorney
6 32 general's office may do all of the following:

6 33 a. Apply to the district court for an injunction to do any
6 34 of the following:

6 35 (1) Restrain a covered packer from engaging in conduct or
7 1 practices in violation of this chapter.

7 2 (2) Require a covered packer to comply with a provision of
7 3 this chapter.

7 4 b. Apply to district court for the issuance of a subpoena
7 5 to obtain contracts, documents, or other records of a covered

7 6 packer for purposes of enforcing this chapter.
7 7 c. Bring an action in district court to enforce civil
7 8 penalties as provided in section 202D.6, including the
7 9 imposition, assessment, and collection of the civil penalties.

7 10 EXPLANATION

7 11 This bill regulates packers engaged in the business of
7 12 purchasing swine for slaughter and processing. It is based on
7 13 the federal Agricultural Marketing Act of 1946 and specific
7 14 provisions which require packers to report purchase data
7 15 relating to swine for slaughter to the United States
7 16 department of agriculture (7 U.S.C. ch. 38, subch. II, pt. C).

7 17 The bill generally defines the term "packer" as a person
7 18 who engages in buying swine for purposes of slaughter, or
7 19 manufacturing or preparing meats or meat food products from
7 20 swine. The bill uses the term "covered packer" to describe a
7 21 packer that has a controlling interest in a processing plant
7 22 that slaughters at least 1,000 swine per business day and that
7 23 is located in this state.

7 24 The bill requires that when a covered packer purchases
7 25 in=state=produced swine, it must reserve 25 percent for the
7 26 purchase of swine from nonaffiliated producers. The bill also
7 27 requires a covered packer to purchase in=state=produced swine
7 28 from nonaffiliated producers based on a graduated schedule
7 29 under which by July 1, 2010, at least 25 percent of all
7 30 in=state=produced swine purchased in this state must be
7 31 purchased from nonaffiliated producers by spot market sale.

7 32 The bill defines a "nonaffiliated producer" to mean a producer
7 33 who holds no more than a de minimus equity interest (shares)
7 34 in or owes no fiduciary duty to the packer. The bill provides
7 35 that a nonaffiliated producer is a producer who does not have
8 1 a special relationship with the packer in which the packer
8 2 directly or indirectly owns, controls, or operates the
8 3 producer's swine operation in this state, who does not finance
8 4 the producer's swine operation in this state, or does not
8 5 directly or indirectly contract for the care and feeding of
8 6 in=state=produced swine kept in this state. The bill defines
8 7 a "spot market sale", in the same manner as federal law, to
8 8 mean a purchase and sale of swine by a packer from a producer
8 9 that specifies a firm base price on the date the agreement is
8 10 executed, if the swine are slaughtered not more than 14 days
8 11 after the date on which the agreement is executed.

8 12 The bill provides enforcement mechanisms. A nonaffiliated
8 13 producer may bring a legal action against a covered packer who
8 14 violates the bill's provisions and may be awarded treble
8 15 damages together with reasonable attorney fees and fees for
8 16 expert witnesses. The bill imposes civil penalties upon a
8 17 covered packer who violates the provisions of the bill.

8 18 The attorney general's office is the primary agency
8 19 responsible for enforcing the bill's provisions. The attorney
8 20 general's office may apply to district court for an injunction
8 21 to restrain a covered packer from engaging in conduct or
8 22 practices in violation of the bill's provisions; require a
8 23 covered packer to comply with a provision of the bill; obtain
8 24 a subpoena to obtain contracts, documents, or other records
8 25 for purposes of enforcing the bill's provisions; or bring an
8 26 action in district court to impose and collect the civil
8 27 penalties. The amount of the civil penalties and the
8 28 authority granted to the office of the attorney general are
8 29 similar to provisions included in Code chapter 202B, which
8 30 prohibits the ownership of swine operations by processors and
8 31 restricts contract feeding contracts executed by processors
8 32 and producers.

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